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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

LEE QUILLAR,

Plaintiff and Appellant,

v.

NIKKI ZEPEDA et al.,

Defendants and Respondents.

A149190

(Solano County
Super. Ct. No. FCS028245)

Lee Quillar, a pro se California inmate, appeals from the trial court's orders granting defendant Anderson's motion to set aside a default and denying Quillar's motion for entry of default against all other defendants. Because neither of these orders is appealable, we dismiss the appeal.

BACKGROUND

On August 1, 2006, Quillar filed a complaint against twelve prison officials, including defendant Anderson. The twelve defendants removed the action to federal court, where the parties litigated the case for several years. After multiple rounds of motions to dismiss and amended pleadings, Quillar filed the operative third amended complaint on July 6, 2009, naming only three defendants: Shankland, Martinez, and Hadenfeldt.

On August 20, 2009, the federal district court dismissed the federal claims in the third amended complaint as to the three remaining defendants. On March 1, 2011, the

Ninth Circuit affirmed except as to the claim for denial of access to courts as to defendant Shankland only.

Upon remand from the Ninth Circuit, defendant Shankland filed an answer to the third amended complaint. Defendant Shankland thereafter filed a motion for summary judgment. The district court granted Shankland's motion for summary judgment as to the denial of access claim—the only remaining federal claim—and declined to exercise supplemental jurisdiction over the remaining state law claims, remanding to the Solano County Superior Court pursuant to 28 United States Code section 1447(c). On October 23, 2015, the Ninth Circuit affirmed the district court's grant of summary judgment as to defendant Shankland, and it issued its mandate on January 12, 2016.

Accordingly, by the time the case returned to Solano County Superior Court in 2016, the only remaining defendant was Shankland, and the only remaining claims were state law claims over which the district court had declined to exercise supplemental jurisdiction. Nonetheless, on April 21, 2016, Quillar filed a request for entry of default and default judgment against all defendants, purportedly pursuant to the original complaint filed on August 1, 2006. The superior court docket reflects a hearing on April 14, 2016; according to the defendants, the parties discussed plaintiff's request for entry of default on that date, and the trial court informed the parties that it would notify them if it was considering entering default. However, on April 19, 2016, default was entered against defendant Anderson, and the request for entry of default was denied as to all others.

On May 10, 2016, defendant Anderson moved to set aside the default on three bases: (1) that after removal of the case to federal court, he filed a motion to dismiss the second amended complaint, an action that precludes entry of default; (2) that the district court and Ninth Circuit had already held that the original complaint (upon which the default was purportedly entered) failed to state a cause of action; and (3) that defendant Anderson was no longer a party to the action, as he was not named as a defendant in the operative third amended complaint. On July 22, 2016, the Solano County Superior Court granted Anderson's motion to set aside the default and denied Quillar's request for entry

of default as to all other defendants. Quillar filed his notice of appeal from these orders on August 7, 2016.

DISCUSSION

In civil cases, a party may seek appellate review only as authorized by Code of Civil Procedure section 904.1. Section 904.1 permits appeals from final judgments and certain interlocutory orders specifically authorized by other statutory schemes. (See Code Civ. Proc., § 904.1, subd. (a); Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2018) ¶ 2:21 [Code Civ. Proc. section 904.1 “effectively codifies the common law ‘one final judgment rule’: i.e., an appeal lies only from a *final judgment* that *terminates* the trial court proceedings by *completely disposing of the matter in controversy*” or “other statutes creating rights to appeal particular judgments or orders”].)

Because they are not final judgments, neither of the orders from which Quillar appeals is appealable. (See *Barbaria v. Independent Elevator Co.* (1955) 133 Cal.App.2d 657, 658–659 [dismissing appeal from denial of plaintiff’s motion for entry of default]; *Veliecescu v. Pauna* (1991) 231 Cal.App.3d 1521, 1522–1523 [dismissing appeal from order granting defendant’s motion to set aside a default].)

DISPOSITION

Quillar’s appeal from the trial court’s July 22, 2016 orders is dismissed. Quillar’s request for judicial notice and motion to augment the record are denied as moot.

BROWN, J.

WE CONCUR:

POLLAK, P.J.

TUCHER, J.